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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 12 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner was a Ph.D. student at the time of filing and indicated on the petition, Part 6, that his proposed employment was as a researcher and teacher. The subsequent unsigned job offers submitted, however, offer employment as an engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Master's degree in Electronics Engineering from the University of Science and Technology of China. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the

petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, electronic engineering, and that the proposed benefits of his work, improved integrated circuits and the semiconductor industry in general, would be national in scope. On appeal, the petitioner asserts that because the director found that the petitioner meets the first two factors, his "future contributions are bound to have a national impact." We cannot conclude that meeting the first two factors creates a presumption that the alien meets the final factor, which is the only factor that looks at the alien's personal accomplishments rather than the nature of the proposed employment and, thus, involves

entirely separate considerations. Notably, the alien in *NYSDOT* was found to meet the first two factors but not the final factor.

The petitioner and several references note the importance of the semiconductor industry. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner documented his student and graduate student membership in the Institute of Electrical and Electronics Engineers (IEEE). The record, however, does not indicate that IEEE requires that student members demonstrate any accomplishments beyond their status as a student for membership. Thus, this membership does not appear to set the petitioner apart from other engineering students. Regardless, professional memberships are one criterion for eligibility as an alien of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(E), a classification that normally requires an approved alien employment certification from the Department of Labor.

Similarly, some of the petitioner's references assert that he has won first and second place at robotics competitions in China in 2003 and 2004, although the certificates submitted only verify his participation in these events. The petitioner also submitted evidence that he received a travel grant from his university. Even if the petitioner won recognition at the robotic competitions and had demonstrated the significance of the travel grant, such evidence falls under the final criterion for aliens of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(F). By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *Id.* at 218, 222. Thus, we cannot conclude that evidence relating to or even meeting two criteria or even the requisite three criteria warrants a waiver of that requirement.

In addition, the petitioner submitted evidence of his academic scholarships and his invitation to join the Golden Key International Honor Society at the University of Illinois, Chicago (UIC) based on his ranking in the top 15 percent of his class. Academic performance, measured by such criteria as grade

point average (the basis of class ranking), cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Id.* at 219, n.6.

The petitioner also submitted evidence that, after the date of filing, he was nominated for inclusion in *Who's Who in America.* As evidence of the significance of this publication, the petitioner submitted materials about the publication on *Wikipedia.* Acknowledging that the director specifically requested additional evidence that *predates* the filing of the petition, the petitioner asserted that events after the date of filing should be considered because research is ongoing and publications after the date of filing can represent work performed prior to that date.

The petitioner must demonstrate his eligibility as of the filing date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). In this matter, that means that he must demonstrate his track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with this policy, the petitioner may not establish a priority date in the hope that his recently completed work will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008).

Regardless, there are no assurances about the reliability of *Wikipedia,* an open, user-edited internet site.[1] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008). Moreover, the information provided by the petitioner from this site is not necessarily helpful to his claim as it indicates that *Who's Who* publications offer features associated with a "vanity press," such as selling

[1] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on December 3, 2009, a copy of which is incorporated into the record of proceeding.

merchandise. *Wikipedia* does not indicate who is eligible to nominate individuals, including whether or not someone can nominate himself. The information on *Wikipedia* also suggests that the publication contains more than 100,000 biographies. We are not persuaded that appearing as one of hundreds of thousands of biographical blurbs in a for-profit dictionary is indicative of the petitioner's influence in the field.

The record also contains evidence that the petitioner reviewed abstracts for IEEE's 2008 International Symposium on Circuits and Systems (ISCAS) and a 2006 Great Lakes Symposium on Very-Large-Scale-Integration (GLSVLSI) prior to the date of filing. The list of reviewers for the GLSVLSI symposium identifies 138 reviewers. The record does not establish the number of reviewers for the IEEE symposium. The large number of reviewers for GLSVLSI suggests that serving as a peer reviewer does not separate the petitioner from other engineers or demonstrate his past influence in the field.

In response to the director's request for additional evidence, the petitioner submitted unsigned job offers from Intel, Mentor Graphics and Trading Technology, all dated after the date of filing. As stated above, the petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Regardless, the job offers have no evidentiary value because they are unsigned. Moreover, while the petitioner notes the prestige of Intel, the petitioner's ability to secure employment, even with a large distinguished employer, is not evidence that the alien employment certification process, which must be initiated by an employer, should be waived in the national interest.

The remaining evidence constitutes the petitioner's theses (which he characterizes as "books"), his publications, his presentations at conferences, citations of his work and listings on citation databases and reference letters. On appeal, the petitioner asserts that the director did not fully consider or understand this evidence. We will consider all of this evidence in detail below.

Regarding the letters, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International,* 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions that the petitioner has contributed to the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were

previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

As stated above, the petitioner received his Master of Science degree from the University of Science and Technology of China and was a Ph.D. student at UIC as of the date of filing. Initially, the petitioner submitted letters from [redacted], an associate professor at the University of Science and Technology of China; [redacted] the petitioner's advisor at UIC; [redacted], a principal staff engineer at Motorola and a member of the petitioner's Ph.D. examination committee; and [redacted], a senior electronics systems engineer at [redacted] who is the only independent reference to support the petition. In response to the director's request for additional evidence, the petitioner submitted a letter from Dr. Ashfaq Khokhar, a professor at UIC.

[redacted] asserts that the petitioner's undergraduate design project involved the design and implementation of "a wireless data sampling system through using Microchip MCU and the Nordic wireless communication module." According to [redacted] this system was "considered one of the best of its kind by experts." [redacted] further asserts that, based on this project, the petitioner was admitted to the graduate program where he "designed and implemented a dancing robot control system, and a small soccer robot wireless communication system and control system." In addition, according to [redacted] the petitioner "designed, simulated and did the layout of a 0.25 um technology cache controller circuit using Cadence Virtuosos schematic, layout and Spectre circuit simulator." [redacted] concludes that the petitioner further distinguished himself at Chinese robot competitions, although the petitioner has only documented his participation in these events. [redacted] does not explain how the petitioner's work is being implemented in the field or provide specific examples of the petitioner's influence. Rather, [redacted] asserts that only an experienced researcher could appreciate the petitioner's accomplishments and concludes: "suffice it to say that they are important contributions in critical areas of electronics engineering and information science research of far reaching practical significance." While we concede that we do not have the scientific expertise to evaluate complex technical discussions, we can comprehend examples of independent research institutions applying the petitioner's work, examples that [redacted] does not provide.

[redacted] praises the petitioner's publication record, asserting that the petitioner's Ph.D. research "breaks new ground in the study of nanometer integrated circuit[s]." [redacted] does not suggest, however, that the petitioner's Ph.D. thesis has been published as a book, a claim advanced by the petitioner but not supported in the record. Rather, the copy of the petitioner's thesis in the record is an unpublished manuscript. Moreover, any Ph.D. thesis, in order to be accepted for graduation, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

More specifically, [redacted] discusses three projects pursued by the petitioner at UIC. First, the petitioner proposed a fast algorithm to accurately estimate the global interconnect performance at the presence of capacitive coupling noise. [redacted] concludes that this algorithm "will

significantly improve the design and verification efficiency of the future large integrated circuit." [redacted] does not identify any academic institution or circuit developer utilizing or even expressing an interest in these results.

Second, [redacted] discusses the petitioner's promising preliminary results in developing a technique that can be used as a better circuit design tool and effectively facilitate the debugging of current integrated circuits. This work appears to be too early in the process to have influenced the field as of the date of filing.

Finally, [redacted] discusses the petitioner's analysis and optimization of interconnect pipelining technique. Specifically, [redacted] speculates that the petitioner "will develop a methodology to optimize the repeater size and the number of flip-flops inserted, maximizing a user-specified figure of merit, and achieving more effective tradeoff between wire delay, [bit error rate (BER)] and power consumption." [redacted] further speculates that this work "will help chip designers optimize the global interconnect wires of current and future large integrated circuit so as to reduce the power consumed by the interconnect wires of current and future large integrated circuit so as to reduce the power consumed by the interconnect wires while increasing the solidity at the same time." Once again, this work appears to have been in too early a stage at the time of filing to be considered part of the petitioner's alleged past track record of success with some degree of influence on the field.

[redacted] discusses the same projects as those discussed by [redacted]. Once again, [redacted] discussion of the final two projects does not suggest that they were far enough along as of the date of filing to have influenced the field. Rather, [redacted] also speculates as to their eventual impact. Regarding the first project, [redacted] asserts that the petitioner greatly accelerated the timing verification and evaluation process of the design stage of large integrated circuits in comparison with the traditional transient simulation software HSPICE. [redacted] does not, however, assert that Motorola where he works or any other integrated circuit developer is pursuing a shift from HSPICE to the petitioner's algorithm.

[redacted] provides broad assertions, such as the claim that the petitioner has excelled in projects beyond the reach of the majority of native U.S. researchers and the claim that the petitioner "turned out a stunning amount of high quality research results." Such broad, vague claims are only persuasive when supported by specific examples of the petitioner's influence. [redacted] asserts that the petitioner's recognition as an expert and growing influence are demonstrated by the invitations to review abstracts for conferences. As stated above, however, at least one of these conferences utilized 138 reviewers to assist with the necessary peer review process that must be undertaken at every peer reviewed conference or symposium and by every peer reviewed journal, of which there is a great number. Significantly, [redacted] does not provide examples of the growing utilization of the petitioner's algorithms.

[redacted] also discusses the difficulty of using the alien employment certification process to secure the employment of especially creative foreign engineers in the semiconductor arena because there is no shortage of U.S. workers who are trained engineers in this area. [redacted] concludes that Congress designed the national interest waiver to address this problem. It is insufficient to assert that an employer would be unable to secure an approved alien employment certification in behalf of the petitioner, an issue that is ultimately under the jurisdiction of the Department of Labor. The petitioner must demonstrate that he personally will serve the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. It is also insufficient to simply provide a letter from a close colleague stating that this is the case. Rather, the petitioner must provide evidence of his influence beyond his immediate circle of colleagues.

As stated above, the only independent reference letter is from [redacted] currently a Ph.D. candidate. [redacted] asserts that his knowledge of the petitioner derives from the petitioner's conference presentations, publications and curriculum vitae. [redacted] asserts that the petitioner's presentation on "Better Leakage Reduction by Exploiting the Built-in MOSFET-Vth Characteristics" was original, innovative and produced breakthrough results. [redacted] explains that based on this presentation, he reviewed the petitioner's other 13 publications and presentations from 2006 and 2007, which amount to an "incredible number." [redacted] later concludes that this "large" number of publications is sufficient to establish the petitioner's influence, although [redacted] does not affirm using the petitioner's algorithms or otherwise being influenced by the petitioner's work.

The record establishes that the petitioner has authored three theses, none of which are documented as published books despite the petitioner's claims. The petitioner also documented five articles published prior to the date of filing between 2004 and 2007. The petitioner also presented his work at 12 conferences in 2006 and 2007. Some references assert that this number alone is evidence of the petitioner's influence. Assuming the petitioner is a prolific author, he must still demonstrate the influence of these articles. The petitioner did document citations of his work. On appeal, the petitioner asserts that the director erred in concluding that all of the citations are self-citations by a coauthor. A careful review of the evidence reveals that while all of the English citations are, in fact, by a coauthor, the Chinese-language citations are independent. Five articles have cited the petitioner's 2005 article on soccer robots. The remaining evidence reflects no more than two citations of any of the petitioner's other articles individually.

On appeal, the petitioner asserts that citations are not the only evidence that can demonstrate an impact and notes that it takes time for citations to appear. We concur with the petitioner that citations are not required evidence. That said, the petitioner must demonstrate a record of success with some degree of influence in the field. Absent citation evidence consistent with such an influence, the petitioner must provide other evidence of his influence, such as letters from independent reference who have utilized his results. The record lacks such evidence. While we also understand that citations take time to appear, even assuming that additional citations are forthcoming, the petition in this matter was filed prematurely, before the impact of the petitioner's work can be demonstrated.

We concur with the director's concern that self-citations by a coauthor, in this case [redacted] do not demonstrate the petitioner's influence outside his own laboratory. On appeal, the petitioner notes that he is the first author of some of the cited work and that [redacted] cites his work in collaboration with researchers with whom the petitioner has not collaborated. While true, it remains that the petitioner's own advisor is the only individual citing the petitioner's Ph.D. research. Such citation, while a normal and expected practice, cannot demonstrate the petitioner's influence outside his own laboratory.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. As stated above, however, it can be argued that most Ph.D. research, in order to be accepted for graduation, must be original and present some benefit to the general pool of scientific knowledge. It does not follow that every researcher publishing original results in an area of importance to the U.S. economy inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.